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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,510	10/07/2003	Michael H. Peronek	FCIE 2 13320-1	5044

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/680,510	<b>Applicant(s)</b> PERONEK ET AL.	
	<b>Examiner</b> Tri M. Mai	<b>Art Unit</b> 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-84 is/are pending in the application.  
     4a) Of the above claim(s) 43-50 and 66-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-42, 51-65 and 74-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### DETAILED ACTION

1. Claims 43-50, and 66-73 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.
2. Claims 77 and 78 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the specificities with respect to the odd number of straight surfaces and the notch as claimed. This is a new matter rejection.
3. Claim 28-42, 51-65, and 74-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation with respect to the the plurality of straight surface symmetrically oriented about he flange is inconsistent. The odd numer of flanges and apexes would not result in a symmetrically orientation. It is unclear about what line the flanges are symmetrically disposed.

Regarding claims 28, 51 and 74, the new limitation with respect to the outer peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number is confusing. The term “totaling” denotes a totality of all straight surfaces that would contradict with the term “partially”.

It is unclear whether claims 77 and 78 readable on the elected species of Fig. 7. It is unclear on what figure these claims are readable on. Applicant to withdraw these claims.

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4. Claims 28-31, 40, 42, 51, 52, 57, 63, 65, 74-76, and 79 are rejected under 35

U.S.C. 102(b) as being anticipated by Prevot et al. (5887739). Prevot teaches a plastic container having an upper mouth portion 42 a side wall portion, a neck at 14, a flange extending outward from the neck 44 having a peripheral edge having a plurality of straight surfaces totaling an odd number as claimed.

5. Claims 38, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevot in view of Collette (4755404) or the admitted Prior Art. It would have been obvious to one of ordinary skill in the art to provide the champagne base in Prevot to provide an alternative base.

It would have been obvious to one of ordinary skill in the art to make the container from PET to provide the desired material.

6. Claims 28-42, and 51-65, and 74-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette (4755404) in view of either Pree (D192942) or JP432 (6-247432), or Akiyama et al. (6752284). Collette teaches a bottle having an upper mouth portion, a lower base, and a flange. Collette meets all claimed limitations except for the flange including flange with straight edges.

Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by Pree to provide an alternate anti slipping flange and/or gripping portion. Note that Pree would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

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Alternatively, JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by JP432 to provide an alternate anti slipping flange and/or gripping portion. Note that JP432 would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

Alternatively, Akiyama teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by Akiyama to provide an alternate anti slipping flange and/or gripping portion. Note that Akiyama would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

To the degree it is argued that flange having an odd number of straight edges in claims, it would have been obvious to one of ordinary skill in the art to provide the flange in the combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange.

7. Claims 28-37, 42, 51-60, 65, 74, 75, 76, 77, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP093 (JP61-93093) in view of either Pree (D192942) or JP432 (6-247432). JP093 teaches a molded plastic container having an upper mouth portion, a lower base, and an anti-rotational flange at portion 9. JP093 meets all claimed limitations except for the flange including flange with straight edges totaling an odd number.

Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by Pree to provide an alternate flange and/or gripping portion. Note that Pree would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by JP432 to provide an alternate anti rotational flange and/or gripping portion. Note that JP432 would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

To the degree it is argued otherwise, it would have been obvious to one of ordinary skill in the art to provide the flange in either JP093 combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange and/or gripping portion.

Regarding claim 3, note the straight surface in Fig. 3 of Pree.

Regarding claims 33 and 43, JP'093 has a frustoconical shape as claimed. Furthermore, it would have been obvious to one of ordinary skill in the art to provide a frustoconical shape in the bottle JP093 to provide an alternative shape for the flange.

8. Claims 38-41, and 61-64, 82, 83, 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over the JP093 combinations, as set forth above, and further in view of Collette

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(4755404) or the admitted prior art. The JP093 combinations meet all claimed limitations except for the champagne bottom. Either Collette or the prior art teaches that it is known in the art to provide a champagne bottom. It would have been obvious to one of ordinary skill in the art to provide a champagne bottom in JP093 as taught by Collette or the admitted prior art to provide an alternative bottom.

It would have been obvious to one of ordinary skill in the art to make the container of JP093 from PET as taught by Collette to manufacture the container easily.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727



11.